

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: May 25, 2006

Resolution No. L-330

RESOLUTION

**RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION
CONSUMER SERVICES DIVISION (UTILITIES SAFETY BRANCH)
INVESTIGATION RECORDS PURSUANT TO PUBLIC RECORDS ACT
REQUEST BY RANDY S. PERLMAN SEEKING DISCLOSURE OF
COMMISSION STAFF INVESTIGATION RECORDS RELATING TO AN
AUGUST 3, 2004 ELECTRIC INCIDENT IN FERNDALE, CALIFORNIA.
(INCIDENT NO. E20040803-02).**

BACKGROUND

A letter dated March 16, 2006, from Randy S. Perlman, attorney for Joseph Royse, appeals California Public Utilities Commission (Commission) staff's initial denial of a request for records concerning the Commission's investigation of an electric incident on August 3, 2004 in Ferndale, California, which injured his client. Commission staff previously informed the requester that the Commission's investigation records could not be made public without the formal approval of the Commission.

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (California Constitution, Article 1, § 3 (b)(2).) New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest. (Id.)

The PRA provides that a an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing

that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.¹

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Section 2.2 (a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C § 2.2 (a) limits staff’s ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests for investigation records. Staff usually informs requesters of the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission’s consideration.

There is no statute forbidding disclosure of the Commission’s safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.² Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.³ Most of these resolutions responded to disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

¹ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

² Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

³ See, e.g. Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.). However, the IPA authorizes disclosure of personal information “Pursuant to the California Public Records Act.” (Civil Code § 1798.24 (g).) While the PRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy (Government Code § 6254 (c)), no information in the current incident investigation file requires redaction.

The Commission has often stated that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

COMMENTS ON DRAFT RESOLUTION:

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on April 25, 2006, in accordance with Public Utilities Code § 311(g). Comments were filed by _____ on _____.

FINDINGS OF FACT

1. The Commission received a letter seeking disclosure of Commission investigation records concerning an electric incident that injured Joseph Royse on August 3, 2004 in Ferndale, California. Access to the records in the investigation file was denied in the absence of a Commission order authorizing disclosure.
2. The Commission’s investigation of the August 3, 2004 accident is closed; therefore, the disclosure of the investigation records would not compromise the investigation.
3. The public interest favors disclosure of the requested investigation records.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code § 6250 et seq.
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples’ business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article 1, § 3 (b) (1) and (2).

3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)
6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The request for disclosure of the Commission's records concerning the investigation of an electric incident that injured Joseph Royse on August 3, 2004 in Ferndale, California is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of May 25, 2006 and that the following Commissioners approved it:

STEPHEN LARSON
Executive Director